

1 The opinion in support of the decision being entered
2 today is *not* binding precedent of the Board
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4 UNITED STATES PATENT AND TRADEMARK OFFICE
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6
7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES
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11 *Ex parte* JOSE FEDIDA
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14 Appeal 2007-2366
15 Application 09/526,547
16 Technology Center 3700
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19 Decided: August 29, 2007
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22 *Before:* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD and
23 JENNIFER D. BAHR, *Administrative Patent Judges.*
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25 CRAWFORD, *Administrative Patent Judge.*
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28 DECISION ON APPEAL
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30 STATEMENT OF CASE

31 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
32 of claims 18, 19, and 21 to 30 and 32 to 39. We have jurisdiction under 35
33 U.S.C. § 6(b) (2002). An oral hearing was held on this case on August 8,
34 2007.

1 Appellants' invention relates to a structure of a prosthesis intended to
2 be implanted in a human or animal passage, and to a prosthesis with such a
3 structure. (Specification 1).

4 Claim 18 under appeal reads as follows:

5 18. A structure of a prosthesis intended to be implanted
6 in a human or animal passage to provide through-passage along
7 said passage, said structure comprising:

8 at least one mesh which, at least in part, is approximately
9 cylindrical and comprises at least one corrugated filament
10 forming approximately annular units linked together, at least
11 some corrugations of said corrugated filament of two respective
12 adjacent units of said annular units being linked together by a
13 plurality of linking means, wherein at least some of said linking
14 means comprise links which are made as a rigid piece,

15 wherein each of said links is provided with a sole central
16 portion and two loops, one loop at each of the ends of said
17 central portion,

18 wherein each of said two loops allows (a) a first shape of
19 an arc of a circle prior to linking and (b) a second shape of an
20 entirely closed loop, in the linking position,

21 wherein each of the two closed loops of each of said links
22 entraps, in said linking position, with some clearance, a
23 respective one of two of said corrugations, which are to be
24 linked together.

1 The Examiner rejected claims 18, 19, 22, 26, 27, 29, 30, 33, 37 and 38
2 under 35 U.S.C. § 102(b) as being anticipated by Goicoechea or in the
3 alternative under 35 U.S.C. § 103 as being unpatentable over Goicoechea.

4 The Examiner rejected claims 23, 28, 34 and 39 under 35 U.S.C.
5 § 103 as being unpatentable over Goicoechea.

6 The Examiner rejected claims 21, 24, 25, 32, 35 and 36 under 35
7 U.S.C. § 103 as being unpatentable over Goicoechea in view of Lau.¹

8 The prior art relied upon by the Examiner in rejecting the claims on
9 appeal is:

10 Goicoechea	US 5,609,627	Mar. 11, 1997
11 Lau	US 5,873,906	Feb. 23, 1999

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13 Appellant contends that Goicoechea fails to disclose or suggest a link
14 with a sole central portion and two loops, one at each end of the central
15 portion wherein each of the loops entraps, in said linking position with some
16 clearance a respective one of two corrugations which are to be linked
17 together.

18 19 ISSUES

20 Whether the Appellant has shown that the Examiner erred in finding
21 that Goicoechea discloses or suggests a link with two loops which each
22 entrap one of two corrugations with some clearance.

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¹ The Examiner has withdrawn the rejection of claims 29 and 40 under
35 U.S.C. § 112, second paragraph (Answer p. 10).

FINDINGS OF FACT

Appellants' invention relates to a prosthesis which is intended for implantation into a human or animal passage (Specification p. 7). The prosthesis includes corrugated units UA to be linked by links 5 (Specification p. 8; Fig. 1). The links comprise two loops B1 and B2 which when closed entrap and thereby link one of two corrugated units UA with some clearance so that the corrugated units can move freely (Specification p. 8, Figs. 1 and 2).

Goicoechea discloses a prosthesis intended for implantation into a human or animal passage (col. 1, ll 13 to 15). The prosthesis is comprised of corrugated units which may be connected by a staple (col. 9, ll 58 to 61; Fig. 4F). Goicoechea does not disclose the structure of the staple. Figure 4F does not depict the staple as formed by two loops each of which entraps one of two corrugated units to be connected. In fact, it appears from Figure 4F that the staple is formed by only one loop. In addition, Goicoechea does not disclose or depict that the corrugated units are joined with some clearance.

Lau does not disclose or suggest links comprised of two loops which when closed entrap and thereby link one of two corrugated units with some clearance so that the corrugated units can move freely.

DISCUSSION

We will not sustain the Examiner's rejections. Each of the independent claims requires a link with two loops, each loop linking one of two corrugated units with some clearance. Goicoechea does not disclose, nor does it suggest such a link. Each of the rejections of the Examiner

1 relies on Goicochea for teaching the claimed link. Lau does not cure the
2 deficiencies of Goicochea.

3 The decision of the Examiner is reversed.

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5 REVERSED
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